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APPENDIX

Supreme Court, U. S.
FILED
AUG 4 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-882

LEONOR ALBERTI DE CANAS and
MIGUEL CANAS,

Petitioners,

-vs.-

ANTHONY G. BICA and
JUAN SILVA,

Respondents.

**ON WRIT OF CERTIORARI TO THE
COURT OF APPEAL OF THE STATE
OF CALIFORNIA SECOND APPELLATE DISTRICT**

PETITION FOR CERTIORARI FILED JANUARY 17, 1975
CERTIORARI GRANTED JUNE 23, 1975

INDEX

	Page
RELEVANT DOCKET ENTRIES	1a
JUDGMENTS OF THE COURTS BELOW	2a
COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF	3a
DEMURRER TO COMPLAINT	15a
RULING ON DEMURRER AND ORDER VACATING NOTICE OF INTENDED DECISION IN RE PRELIMINARY HEARING	16a

RELEVANT DOCKET ENTRIES IN THE PROCEEDING BELOW

Date	*Proceedings*
October 24, 1972	Complaint for Damages and Injunctive Relief filed
November 22, 1972	Defendants Demurrer to Complaint filed
February 14, 1973	Ruling on Demurrer and Order Vacating Notice of Intended Decision in Re Preliminary Injunction
April 30, 1973	Notice of Appeal filed by Plaintiffs from Order of February 14, 1973
July 26, 1974	Judgment of Court of Appeal, Second Appellate District, Division II
October 24, 1974	Petition for Rehearing Denied by California Supreme Court

JUDGMENTS OF THE COURTS BELOW

The Judgment of the Court of Appeal of the State of California Second Appellate District is set forth in the Appendix to the Petition for Certiorari filed January 17, 1975, at p. 1a.

The Order of The Supreme Court of California denying the petition for hearing is set forth in the Appendix to the Petition for Certiorari filed January 17, 1975, at p. 1b.

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FILED
SUPERIOR COURT
OCT 24 1972
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By Beverly Pedigo
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IN THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF
SANTA BARBARA

LEONOR ALBERTI DE CANAS, and MIGUEL CANAS, Plaintiffs, vs. ANTHONY G. BICA, JUAN SILVA, DOES I through X, inclusive, Defendants.	No. SM 11789 COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

FIRST CAUSE OF ACTION

Plaintiffs allege:

1. This action is brought pursuant to California Labor Code § § 2805(a) and 2805(c). Section 2805(a) provides as follows:

> No employer shall knowingly employ an alien who is not entitled to lawful residence in the United States if such employment would have an adverse effect on lawful resident workers.

Section 2805(c) provides:

> The foregoing provisions shall not be a bar to civil action against the employer based upon violation of subdivision (a).

2. Plaintiff LEONOR ALBERTI de CANAS is the wife of plaintiff MIGUEL CANAS. She is a resident of the City of Santa Maria, County of Santa Barbara, California. Plaintiff LEONOR ALBERTI de CANAS lawfully entered the United States from Honduras and was duly registered according to law as an immigrant on September 22, 1966. Her status as an immigrant is further defined as Class SA-1 which entitled her to work in many occupations including that of agricultural worker. Plaintiff LEONOR ALBERTI de CANAS has been employed for the past five (5) years as a field agricultural worker. Plaintiff LEONOR ALBERTI de CANAS is known among fellow employees and former employers as a conscientious and diligent worker.

3. Plaintiff MIGUEL CANAS lives with his wife and six (6) minor children in the City of Santa Maria, County of Santa Barbara. Plaintiff MIGUEL CANAS lawfully entered the United States from El Salvador and

was duly registered according to law as an immigrant on January 1, 1965. Plaintiff CANAS' status as an immigrant is further defined as Class 0-1 which entitled him to work in every occupation except those few reserved for citizens. Plaintiff MIGUEL CANAS has been employed for the past five (5) years as a field agricultural worker. Plaintiff CANAS is known among his fellow employees and former employers as a conscientious and diligent worker.

4. Defendant ANTHONY G. BICA is, *inter alia*, a farm labor contractor who knowingly employs illegal alien entrants into the United States as farm workers on his crews in place of qualified and lawfully resident local workers.

5. Defendant BICA at all times relevant herein did and does reside, and did and does maintain his principal place of business, in the City of Santa Maria, County of Santa Barbara, California.

6. Defendant JUAN SILVA is, *inter alia*, the manager and foreman of defendant BICA. Defendant SILVA employs illegal entrants as farm workers as crew members in place of qualified and lawfully resident local workers.

7. Plaintiffs are informed and believe and therefore allege that at all times mentioned herein Does I through X were grape growers who obtained employees to work in their grape vineyards through defendants BICA and SILVA; that through defendants BICA and SILVA defendants Does I through X are able to employ and do employ illegal entrants as farm workers in place of qualified legally resident local workers. The true names or capacities, whether individual, corporate, associate or otherwise, of the defendants Does I through X are

unknown to plaintiffs, who therefore sue said defendants by such fictitious names, and plaintiffs will amend this complaint to show their true names and capacities when the same have been ascertained. Does I through X and the named defendants where the agents and the employees of their co-defendants and in doing the things herein alleged were acting within the course and scope of such agency and employment at all times.

8. Plaintiffs MIGUEL CANAS and LEONOR ALBERTI de CANAS were offered employment as farm workers by defendants BICA and SILVA and accepted said offers of employment on or about June 5, 1972. In accepting such employment with defendants each plaintiff gave up previous farm labor employment with another employer based upon the representations made by defendants BICA and SILVA that employment with defendants would provide a good and steady job.

9. Each plaintiff herein worked for defendants BICA and SILVA from a time on or about June 5, 1972 until a time on or about September 28, 1972. On or about September 28, 1972 defendants denied plaintiffs further employment on the sole ground that defendants then had a sufficient supply of labor. During their employment with defendants each was a good and hard worker and defendants at no time suggested that they were unsatisfactory employees in any respect.

10. Defendants are open and notorious employers of illegal aliens and encourage illegal aliens to compete with local workers for jobs in order to depress local wages and working conditions.

11. Defendants' work crews have been raided by the United States Border Patrol of the Immigration and Naturalization Service on at least 4 different occasions

during the summer and fall of 1972; on each occasion defendants were found to be employing illegal aliens; and said illegal aliens were apprehended and removed to Mexico on each occasion. Plaintiffs are informed and believe and therefore allege that the United States Border Patrol has apprehended no fewer than 40 illegal aliens from the work crews of defendants during the past 6 months; that the following numbers of illegal aliens were apprehended by the United States Border Patrol from defendants' work crews on or about the following dates: On August 10, 1972, 15 illegal aliens were apprehended; on September 23, 1972, 7 illegal aliens were apprehended; on October 17, 1972, 8 illegal aliens were apprehended; and on October 23, 1974, 4 illegal aliens were apprehended.

12. Defendants' employment of illegal aliens at the times alleged herein was wilfull and with actual or constructive knowledge of the illegal alien status of said workers. Certain of the illegal aliens apprehended from defendants' work crews and returned to Mexico by the United States Border Patrol subsequently entered illegally into the United States and worked for defendants.

13. On or about October 15, 1972 plaintiff MIGUEL CANAS asked defendant JUAN SILVA for employment for himself and the other named plaintiff. Defendant SILVA refused jobs to any of the plaintiffs for the sole reason that he and defendant BICA had no more jobs available on their work crews.

14. On October 17, 1972 at approximately 12:30 P.M., the United States Border Patrol raided defendants' work crews and apprehended 8 illegal aliens from said crew; 3 additional members of the work crew who were

believed to be illegal aliens fled by vehicle and escaped the United States Border Patrol.

15. On October 17, 1972 at approximately 4:30 P.M. plaintiff MIGUEL CANAS spoke with defendant BICA, requesting jobs for himself and the other named plaintiff. Defendant BICA refused such request for the sole reason that he allegedly had no jobs available.

16. On October 20, 1972, plaintiff CANAS again requested from defendant BICA jobs for himself and his wife and again was refused solely on grounds that no jobs were available.

17. On October 23, 1972 at approximately 11:30 A.M. the United States Border Patrol again raided defendants' work crews and apprehended 4 illegal aliens from said crew.

18. Plaintiffs are informed and believe and thereon allege that defendants presently maintain a steady work crew of no fewer than 15 workers, at least 10 of whom are illegal aliens and that defendants know of such illegal alien status. Said illegal aliens presently employed by defendants, all Spanish-speaking males, are visibly recent arrivals from Mexico by virtue of their dress, habits and language, and seek employment from defendants under conditions which put defendants or other employers on notice that said aliens are not entitled to employment by reason of their illegal status.

19. Defendants can, by simple request for production of documents on or after employment, ascertain with reasonable certainty that such prospective employees are illegally present in this country and have no right to work for defendants, but defendants wilfully fail and refuse to do so.

20. Plaintiffs are informed and believe and therefore allege that defendants' employment of illegal aliens at

all times mentioned herein has had the effect of displacing farm workers legally resident in the United States inasmuch as the supply of qualified job applicants for farm work in the Santa Maria Valley area exceeds the employers' demand for farm workers.

21. Plaintiffs are informed and believe and therefore allege that during the times herein mentioned defendants wilfully or knowingly, directly or indirectly, induced the illegal entry into the United States of aliens in violation of the laws of the United States and California by offering employment without securing proof that such aliens are entitled to legal presence in the United States.

22. Plaintiffs are informed and believe and therefore allege that during the times mentioned herein defendants wilfully or knowingly, directly or indirectly, took certain measures and initiated certain acts to shield said illegal aliens from detection by the United States Border Patrol. Additionally, defendants refused to assist the United States Border Patrol authorities in apprehending those illegal aliens fleeing from defendants' work crews upon observing the approach of the United States Border Patrol on the occasions described herein.

23. Plaintiffs are informed and believe and therefore allege that the United States Border Patrol of the Immigration and Naturalization Service is presently doing everything within its capacity and its legal powers to apprehend illegal aliens employed by defendants and other employers in the area and to transport said aliens out of the country, but that defendants continue to employ illegal aliens at will.

24. As a direct and proximate result of defendants' wrongful acts, the plaintiffs have been damaged by loss

of their employment with defendants in the amount of $20.00 per day from the date of defendants' denial of employment to a time presently unascertainable, and plaintiffs pray for leave to amend this complaint at such time as such information becomes available to them. Plaintiff's damages up to the date of filing this action are in a sum of no less than $1,800.00.

25. Defendants' unfair and unlawful actions have caused and continue to cause serious, substantial, permanent and irreparable harm to the plaintiffs in that they have unfairly and unlawfully denied employment to Santa Maria Valley farm workers, compel farm worker families to be dependent unnecessarily on public assistance, and unfairly and unlawfully suppress their wages and working conditions.

26. Unless restrained by this Court, defendants threaten to employ illegal aliens in the future to the irreparable injury of plaintiffs and their families. Plaintiffs have no adequate remedy at law for said injuries in that defendants' conduct will constitute a continuing hardship, thereby depriving plaintiffs of the very necessities of life owing to their loss of income from wages.

SECOND CAUSE OF ACTION (Unfair Competition)

27. Plaintiffs refer to and incorporate by reference herein Paragraphs 1 through 26 inclusive of the First Cause of Action.

28. California Civil Code § 3369 permits any member of the general public to bring suit for injunctive relief and damages against any person who engages in any unfair or unlawful business practice.

29. The acts of defendants as herein alleged were and are designed and do in fact cause unfair competition to plaintiffs who are all underemployed or unemployed as the result of defendants' acts; defendants' acts further cause unfair competition to the general public and to every California agricultural employer who complies with applicable United States and California law in regard to hiring practices.

30. Defendants at all times herein alleged have fostered, encouraged, aided and abetted unlawful competition with domestic farm workers, including the plaintiffs by employing illegal aliens and thus creating unemployment and underemployment among lawfully residing domestic farm workers and thereby depressing wages and working conditions in the Santa Maria Valley.

31. Defendants through their agents, illegal alien employees, unfairly and unlawfully have competed with domestic farm workers including plaintiffs.

32. United States Immigration and Naturalization Service statistics during 1971 indicate that 420,000 illegal aliens, primarily Mexican citizens seeking farm labor employment, were apprehended by the United States Border Patrol. Federal labor authorities estimate that for every illegal alien who is apprehended, two enter the country and leave undetected. Thus, in any given year, over one million illegal aliens are employed primarily in the United States farm labor, or approximately 20 per cent of the primary agricultural work force. Moreover, the percentage of illegal aliens employed by any individual employer is directly related to the conditions of employment offered by that employer: the worse the working conditions, the greater the number of illegal aliens.

33. The employment of illegal alien labor by defendants and other employers creates an onerous economic effect upon the Santa Maria Valley area. Plaintiffs are informed and believe and therefore allege that during the past fiscal year approximately 200 local farm worker fathers were underemployed or unemployed and receiving consequent public assistance owing to the employment of an estimated minimum of 400 illegal aliens in the area at a minimum cost to local and state taxpayers in a sum in excess of $256,000.00.

34. Plaintiffs are informed and believe and therefore allege that local lawfully resident farm workers would have earned additional wages in a sum of not less than $800,000.00 during the last fiscal year through farm labor employment but for the wrongful acts of defendants and others in employing an estimated minimum of 400 illegal aliens at an average of an estimated minimum 4 months. Moreover, virtually all of the wages earned by illegal aliens while employed in this country are sent or taken outside the United States, primarily to Mexico, and spent there. The employment of illegal aliens by defendants and others in the Santa Maria Valley, therefore, results in the financial loss to local tax payers in excess of one million dollars annually by virtue of wages drained from the local area and welfare payments made to displaced lawfully residing local workers.

WHEREFORE, plaintiffs pray for the following relief:

1. For an order temporarily and permanently restraining the defendants, their representatives and employees and all persons acting in concert or participating with them from engaging in or performing, directly or indirectly, any and all of the following acts:

From failing or refusing to hire each plaintiff herein for regular employment unless defendants make a showing that all of defendants' available job positions are filled by employees who are citizens or lawful residents of the United States. Such showing shall consist of a declaration by either defendant attaching a copy of the evidence of citizenship or lawful residence of each such employee, to be filed in this Court within 24 hours from the time of service of this order upon either defendant herein.

2. For an order preliminarily and permanently enjoining the defendants, their officers, agents, employees and assigns,

(a) from employing in agriculture positions, with actual or constructive knowledge, directly or indirectly, any non-citizen not legally entitled to employment in the United States;

(b) from failing to obtain reasonable proof of a farm worker applicant's lawful residence status in the United States as a condition precedent to any employment as evidenced by documentation issued by the United States Immigration and Naturalization Services or other duly authorized federal agency; and

(c) from failing or refusing to make such documentation of an employee's lawful residence available to the United States Border Patrol authorities, plaintiffs or their attorneys for inspection upon reasonable notice.

3. For actual damages in the amount set forth in the complaint; and

4. For exemplary damages in the amount of $5,000.00 for each named plaintiff; and

5. For costs of suit, attorney's fees, and such other relief as the Court deems proper.

DATED: October 24, 1972.

/s/ Burton D. Fretz
BURTON D. FRETZ
Attorney for Plaintiffs

VERIFICATION

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA BARBARA)

I am one of the Plaintiffs in the above entitled action; I have read the foregoing Complaint for Damages and Injunctive Relief and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief; and as to those matters I believe it to be true.

I, MIGUEL CANAS certify (or declare) under penalty of perjury that the foregoing is true and correct.

Executed on October 24, 1972 at Santa Maria, California.

/s/ Miguel Canas
MIGUEL CANAS

[Certificate of service omitted in printing.]

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FILED
SUPERIOR COURT
NOV 22 1972
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By S.R. LLAMAS
Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA BARBARA

-oOo-

LEONOR ALBERTI DE CANAS and MIGUEL CANAS, Plaintiffs, vs. ANTHONY G. BICA, JUAN SILVA, et al Defendants.	No. SM 11789 DEMURRER TO COMPLAINT

Comes now the Defendants, ANTHONY G. BICA and JUAN SILVA, and demur to Plaintiffs' Complaint herein as follows:

I

The First and Second Causes of Action of Plaintiffs' Complaint do not state facts sufficient to constitute a cause of action against Defendants.

II

The Court has no jurisdiction of the subject of the First Cause of Action alleged in Plaintiffs' Complaint.
DATED: November 22, 1972

Law Offices, DANIEL J. KIRK

By /s/ Robert Trapp, Jr.
Attorney for Defendants

[Certificate of service omitted in printing.]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA BARBARA

LEONOR CANAS, et al.,	)	No. SM 11789
	)	
Plaintiffs,	)	RULING ON DEMURRER
	)	AND ORDER VACATING
vs.	)	NOTICE OF INTENDED
	)	DECISION IN RE
ANTHONY G. BICA, et al.,	)	PRELIMINARY
	)	INJUNCTION
Defendants.	)	

The defendants have filed a demurrer to the Complaint on the ground that it does not state facts sufficient to constitute a cause of action.

Prior to the hearing on the demurrer, there was a hearing upon the plaintiffs' request for a preliminary injunction, and oral and documentary evidence was

introduced. After completion of the hearing (extending over several days), and after considering the points and authorities submitted by the respective parties, it was announced in open court that I intended to grant the preliminary injunction, and requested a form of preliminary injunction to be presented.

After reconsideration of the points and authorities submitted on both the demurrer, and the request for a preliminary injunction,

IT IS HEREBY ORDERED that:

(1) The Notice of Intended Decision is vacated and set aside, and the request for a preliminary injunction is hereby denied.

(2) The demurrer to the Complaint is sustained, without leave to amend, and the action is dismissed.

Counsel for defendants shall prepare and serve an order in accordance with the foregoing.

DATED February 14, 1973.

/s/ Marion A. Smith
Judge of the Superior Court

MEMORANDUM

Labor Code 2805

Under the authorities submitted, I feel compelled, reluctantly, to find that Labor Code 2805 is unconstitutional, on the ground that (1) It encroaches upon, and interferes with, a comprehensive regulatory scheme enacted by Congress in the exercise of its exclusive power over immigration, and (2) violates the equal

protection clause of the 14th Amendment to the U.S. Constitution, as set forth in the leading case of *Purdy & Fitzpatrick vs. California*, 71 Cal (2) 566. See also *Cobos vs. Mello-Dy Ranch*, 20 CA (3) 947; and Memorandum of Opinion in the case of *Dolores Canning Co., Inc. vs. George W. Milias, etc.*, Case No. 016-928, Los Angeles Superior Court, which latter case holds Labor Code 2805 to be unconstitutional under *Purdy*, and that as a criminal statute it is too vague and uncertain for enforcement. As pointed out in *Dolores*, the statute forbids hiring of an "alien who is not entitled to lawful residence in the United States," and under the U.S. Immigration laws, there are many such aliens who may work in the United States, under certain classifications, and Labor Code 2805 is in direct conflict with Federal Law.

Civil Code 3369

Civil Code 3369 provides that (1) "Neither specific or preventive relief can be granted to enforce a penalty or forfeiture in any case, nor to enforce a penal law, except in case of a nuisance or unfair competition. (2) Any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction. (3) As used in this section, unfair competition shall mean and include unlawful, unfair or fraudulent practice . . ."

In the case of *Diaz vs. Kay-Dix Ranch*, 9 CA (3) 588, the court documents in detail the plight of the migrant farm worker, and the adverse effect upon his life and working conditions resulting from the employment of

Mexican Nationals illegally entering this country and state. Nevertheless, the court upheld the action of the lower court in sustaining a demurrer without leave to amend, and dismissal of the action. The court there pointed the finger at the Federal Government as being respondible for this condition, and after considering the various factors, pro and con, as to the granting of an injunction, said, "A third factor, the comparative efficacy of federal action, tips the scales against the relief . . . It is more orderly, more effectual, less burdensome to the affected interests, that the national government redeem its commitment. Thus the court of equity withholds its aid." The court further mentions, but does not pass on the questions of encroachment upon immigration regulation exclusively reserved to the Federal Government; Federal preemption; violation of civil rights legislation.

In *Diaz vs. Kay-Dix Ranch*, an injunction was specifically requested under Civil Code 3369, and the common law right to pursue a lawful occupation, the same as plaintiff does in this case. In the case of *Barguis vs. Merchants Collection Assn.*, 7 Cal (3) 94, the Supreme Court hints that except for "considerations of federalism" the alleged hiring of illegal aliens could constitute an "unlawful . . . business practice under Section 3369." Whether or not the Supreme Court meant that relief could have been granted in *Diaz* under Section 3369, if the court so elected, or that "considerations of federalism" precluded it, is not clear.

Since it has been determined above that Labor Code 2805 is unconstitutional, it does not seem reasonable that the same exercise of power by the court under the guise of injunctive relief pursuant to CC 3369 is any

more immune to attack, and for that reason any injunction granted under CC 3369 would be unconstitutional as violating the 14th Amendment (equal protection) and encroaching into a field preempted by the Federal Government, under the authority of *Purdy & Fitzpatrick.*

Damages

As to the action for damages, the question is perhaps more difficult. Except for Labor Code 2805, there is no common law remedy under the facts of this case. See *Cobos vs. Mello-Dy Ranch*, 20 CA (3) 947, and *Larez vs. Aberti*, 23 CA (3) 217, at page 226.

Since Labor Code 2805 is held to be unconstitutional, it would seem that the action for damages based solely thereon, would also fall.

Also, see *Cobos vs. Mello-Dy Ranch* (Supra) at page 951, which indicates that the "problems of enforcement, so well pointed out in Diaz, exist at least in equal degree in the enforcement of the federal act by state court intervention through awarding of damages, both compensatory and punitive. . . "

Admittedly, *Larez* refers to Labor Code 2805 (passed after the lower court decision) as providing a remedy, but it does not pass upon the constitutionality of that statute.

Conclusion

I am fully cognizant of the adverse effect that the hiring of illegal aliens has upon the migrant farm

workers, and upon the tax payer through increased welfare costs. After hearing the evidence on the preliminary injunction, it is reasonably certain that plaintiffs could sustain the factual allegations of their complaint. The need for a remedy is clearly pointed out in *Diaz.* However, until the Supreme Court determines the question, I feel powerless to supply such remedy, and through the rulings today, the question can be expeditiously presented and determined.

/s/ Marion A. Smith
Judge of the Superior Court